

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 04-0114P

Sales Tax

For the Months of December 2002, January 2003, June 2003, and August 2003

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the late penalty.

II. **Tax Administration** - Interest

Authority: IC 6-8.1-10-1

The taxpayer protests the interest assessment.

STATEMENT OF FACTS

The late penalty and interest were assessed on the late filing of sales tax returns for the months of December 2002, January 2003, June 2003, and August 2003.

The taxpayer is a company located out-of-state.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty be waived as the taxpayer was unaware of the early filing due date. The taxpayer's employee who completes the sales tax return is a new employee. The taxpayer's new employee used the coupons left by her predecessor, and, assumed the due date for filing the monthly sales tax return was the 30th of the month. Upon receiving the first proposed assessment, the taxpayer's new employee realized the due date was the 20th of the month and not the 30th of the month. With this new

information, the taxpayer's new employee began filing the monthly sales tax returns on the 20th of the month, the early filing due date.

The regulation which provides the guideline for penalty is as follows:

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was ignorant of tax duties as the taxpayer was unaware of the early filing due date. Ignorance is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.

II. Tax Administration – Interest

Interest may not be waived according to statute. IC 6-8.1-10-1.